

## **Chang, Lisa**

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**From:** Bonifaci, Angela  
**Sent:** Thursday, July 30, 2015 8:05 AM  
**To:** Fournier, Tony; Chang, Lisa; Castanon, Lisa  
**Cc:** Opalski, Dan  
**Subject:** Re: Restrictions on lobbying?

Additionally, I can see the Swinomish claiming that they are simply helping people to "educate lawmakers on the need to regulate NPS agricultural pollution", stopping short of "urging their lawmakers..."

They haven't yet drafted the content of the auto-generated letter. So, if there is a line, we need to know where it is so that we can provide them with guidance.

Thanks for your thoughts!

Angela

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**From:** Bonifaci, Angela  
**Sent:** Thursday, July 30, 2015 7:37 AM  
**To:** Fournier, Tony; Chang, Lisa; Castanon, Lisa  
**Cc:** Opalski, Dan  
**Subject:** Re: Restrictions on lobbying?

Thanks, Tony.

But then we come to the additional question of whether this applies to tribes. As Lisa states "However, the highlighted portion below only addresses non-profits and institutes of higher education."

What do you think?

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**From:** Fournier, Tony  
**Sent:** Thursday, July 30, 2015 7:30 AM  
**To:** Bonifaci, Angela; Chang, Lisa; Castanon, Lisa  
**Cc:** Opalski, Dan  
**Subject:** RE: Restrictions on lobbying?

Another component of this is see that was not highlighted in Lisa Chang's email is:

(iii) Any attempt to influence:

(A) The introduction of Federal or state legislation:

Lisa stated: "...for citizens to generate a letter to their legislator urging regulation of NPS agricultural pollution..."

**Tony Fournier**  
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**From:** Bonifaci, Angela  
**Sent:** Wednesday, July 29, 2015 5:07 PM  
**To:** Chang, Lisa; Fournier, Tony; Castanon, Lisa  
**Cc:** Opalski, Dan  
**Subject:** RE: Restrictions on lobbying?

Tony and Lisa –

Please note that there is not pending legislation in this case. And the subawardee is framing the letter as educating elected officials, which is actually a priority of the Puget Sound Management Conference.

However, it would be good to be able to clearly communicate where the lines are to the subawardee.

Thank you,  
Angela

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**From:** Chang, Lisa  
**Sent:** Wednesday, July 29, 2015 3:16 PM  
**To:** Fournier, Tony; Castanon, Lisa  
**Cc:** Bonifaci, Angela; Opalski, Dan  
**Subject:** Restrictions on lobbying?

Hi Tony and Lisa,

A couple of months ago, I asked you about EPA's authority to intervene in a case where our direct grantee, NWIFC, was in our view allowing a subgrantee to pursue an activity that was contrary to the goals and plan of the program under which it is funded. The activity is a "public education and outreach" campaign aimed at building public support for regulating non-point source agricultural pollution.

We recently learned that the grantee intends to include a link, in the main website that is the centerpiece of its outreach campaign, for citizens to generate a letter to their legislator urging regulation of NPS agricultural pollution.

This appears to be contrary to the spirit of our new grant regulations on lobbying (see yellow-highlighted portion below). However, the highlighted portion below only addresses non-profits and institutes of higher education.

We would like to be able to be clear with NWIFC and its subawardee that the activity they would like to pursue is not allowed under our grant regulations, but again, it seems like the relevant lobbying restrictions only apply to non-profits and IHEs.

Can we presume that the highlighted activities should also not be pursued by NWIFC or its subawardee?

Lisa

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**§200.450 Lobbying.**

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Governmentwide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

- (i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;
- (ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;
- (iii) Any attempt to influence:

(A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

- (B) Examinations and discussions of broad social, economic, and similar problems; and
- (C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. §4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).
- (v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of §200.413 Direct costs.
- (vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also §200.415 Required certifications.)
- (vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in §200.302 Financial management with respect to lobbying costs during any particular calendar month when:
- (1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and
  - (2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.
- (B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.
- (viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.